IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4807 of 2001

For Approval and Signature:

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ADARSH PRAGATI MANDAL - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR JAYRAJ CHAUHAN FOR MR MUKUND M DESAI for Petitioner(s) : 1,
MR AJ DESAI, AGP for Respondent(s) : 1, 2 & 3
MR AD OZA for Respondent(s): 4

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 20/04/2006

ORAL JUDGMENT

1.The petitioner is a Trust registered under the provisions of the Bombay Public Trusts Act,

established for the purpose of carrying on educational activities and imparting education in the backward District of Panchmahals since 1988.

2.The petitioner is aggrieved by the decision of the Gujarat Secondary Education Board (hereinafter referred to as “the Board”), whereby the petitioner – Adarsh Pragati Mandal, Kharol, Taluka: Lunawada, District: Panchmahals was given permission to run a girls' Secondary school as an unaided one with effect from 1998, although the petitioner had applied for permission to run an aided school.

3.I have heard Shri Jayraj Chauhan, learned counsel appearing for Shri M.M.Desai, learned counsel for the petitioner, Shri A.J.Desai, learned Assistant Government Pleader, appearing for respondents No.1 to 3 and Shri A.D.Oza, learned counsel appearing for respondent No.4, who is the main contesting party to the writ petition.

4.It is forcefully submitted by Shri Jayraj Chauhan, learned counsel for the petitioner, that even prior to 1998, the petitioner was permitted to run

Standard-VIII class under the unaided category, but because of financial constraints, it could not start the said school. The petitioner represented to the authorities and thereafter, by an order dated 16.10.1998, the petitioner was permitted to start an unaided school with effect from June 1998. However, the petitioner kept on making representations to the authorities concerned, including the Honourable Minister for Education for permission to run the school as an aided one.

Referring to the Circular issued by the State Government dated 30.6.1999, which provides that if within the radius of ten kilometers, no secondary school is available, then an aided school would be given to the area, it is submitted that the petitioner's school falls within the said criteria and therefore, it should have been given permission to start an aided school. It is further submitted that certificates have been issued by the Bhoja Group Gram Panchayats and Kharol Group Gram Panchayats wherein it has been stated that the population of these villages is more than 10,000 and that there is no secondary school for girls

within the radius of ten kilometers, except one - Liberty High School at Kharol. However, looking to the population of surrounding areas, at least three more schools are required. Moreover, since the area is mostly inhabited by tribal and backward class communities who are rigid and conservative regarding imparting education to girls, the petitioner-Trust, being actively involved in the cause of imparting education to the girls of this area, made several attempts for getting permission to open an aided school but to no avail. It is further submitted that in the past, the State Government has converted 40 unaided schools into aided schools and applying the same criteria, the petitioner should have been given permission to open an aided school. It is further argued that the Government Circular dated 1.9.1997 annexed as Annexure-F to the writ petition, clearly states that the Secondary schools for girls started after the year 1997, were to be given permission as aided schools. Therefore, since the school of the petitioner was given permission with effect from 16.10.1998, this permission should have been for an

aided school and not for an unaided one.

5. On the other hand, Shri A.D.Oza, learned counsel appearing for the Board (respondent No.4), has submitted an affidavit-in-reply, copy of which has been served upon the learned counsel for the petitioner, which has been taken on record. Drawing the attention of the court to the averments contained in the said affidavit, he has submitted that the writ petition is not maintainable since no legal right, much less any fundamental right of the petitioner has been violated by the Board. He submits that even though permission had been granted to the petitioner to start a school vide order dated 17.4.1995, it could not start the said school due to lack of infrastructure. He has further submitted that the petitioner has not approached this court with clean hands and has suppressed the material facts inasmuch as that the petitioner had made an application dated 27.8.1990 to the Board for granting registration of secondary school with effect from June 1991. However, as the petitioner was not having adequate facilities of building nor the financial viability or required

infrastructure, the application was rejected by the Board. One of the reasons for rejection of the application was that there was another secondary school in the same village run by another Trust and in order to avoid unhealthy competition, permission to the petitioner was refused.

6.The petitioner was aggrieved by the said rejection and filed an appeal before the Education Department. This appeal was partly accepted and by order dated 27.3.1995, the petitioner was granted permission to run an unaided school with effect from June 1995. Pursuant to the order passed in appeal, the Board passed order dated 17.4.1995 granting permission to the petitioner to run school as per the conditions laid down in the said order. The order dated 17.4.1995 is annexed as Annexure-I to the reply-affidavit. The main condition which has been stipulated therein is that the petitioner would file a Deed of declaration to the effect that it would not claim any grant. However, the petitioner failed to file the said Deed of declaration and the permission granted to it was cancelled vide order dated 13.9.1995. The

petitioner again challenged the order dated 13.9.1995 in appeal, and the Education Department, vide order dated 16.10.1998, was pleased to grant permission to run a class of Standard-VIII on a non-grant basis, on condition of depositing an amount of Rs.2 lacs in the joint account in the Bank within a period of one month from the date of the permission. Shri A.D.Oza has submitted a xerox copy of the order dated 16.10.1998, which is taken on record, which clearly contains the stipulation that the permission accorded to the petitioner to run the school was subject to the condition that it would not claim any grant, which fact has been suppressed by the petitioner in the writ petition. Lastly, it is submitted by Shri Oza that the petitioner was granted registration with effect from June 1998 vide order dated 7.1.1999 and therefore, the petitioner can place no reliance on the Government Resolution dated 1.9.1997 which is of a later date. Even otherwise, the school in question is closed since the year 2002 and therefore, there is no question of granting the relief claimed by the petitioner in this writ

petition which is to the effect that the petitioner be permitted to open an aided girls' school with effect from June 1998. No other point has been urged by the parties.

7. It is, no doubt true, that the State Government has issued various Circulars and Resolutions and has laid down extensive criteria for the purpose of granting aid to eligible schools in remote parts of the State especially for imparting education to girls. However, such grants are not automatically given but are subject to, and on the basis of, certain eligibility criteria such as financial viability, proper building and facilities, infrastructure and other conditions conducive to imparting education to the children of backward and tribal areas, especially girls.

8. To claim grant-in-aid is not a legal right of the petitioner, much less a fundamental right. To give or not to give financial aid to an eligible educational institution, is a policy decision of the State Government, which can only be taken after ascertaining the ground realities and factual

situation in each case. It is not for the courts to dictate whether grant-in-aid should be given to a particular school, or not. It is purely an executive function, to be deliberated upon and performed by those who perform executive duties. Grant-in-aid can be granted subject to the fulfilment of requisite conditions. The financial policy of the State also plays a major role in the exercise of discretion in this regard. After all, the State Government is to ensure that the grant which is doled out by it, for the purpose of imparting education to girls in remote areas, can be, or is actually being, utilized properly and effectively, in order to serve the purpose for which it is being given. It is to be ensured that there should be a reasonable nexus to the objective sought to be achieved, which is the laudable objective of imparting education to girls in remote and tribal areas, in order to uplift and empower them and also to fulfil the constitutional obligations of a Welfare State. Therefore, any reasonable classification resorted to by the Respondent-Board, which is a “State” within the

meaning of Article 12 of the Constitution, in granting or not granting aid to an educational institution, such as the petitioner's school, on the basis of intelligible criteria, cannot be said to be discriminatory, or violative of Article 14 of the Constitution of India.

9. Looking to the facts of the present case, it is very clear that the petitioner had been applying for permission to open an aided school for girls ever since the year 1990, which permission was refused due to its lack of infrastructure and financial viability. At various points of time, as detailed hereinabove, the petitioner has appealed against the orders of rejection of permission passed by the Board and even after the said appeals were partly allowed, permission to open an unaided school was granted. A perusal of the order dated 16.10.1998 indeed makes it very clear that permission was accorded to the petitioner to open a school, only on condition that it would not claim grant-in-aid. This fact has not been mentioned by the petitioner in the writ petition and the order dated 16.10.1998 has not been annexed along with

the writ petition. Having accepted the condition that it would not claim grant-in-aid, it is hardly open to the petitioner-Trust to turn around and say that the refusal of permission to grant an aided school by the respondent-Board is discriminatory.

10.After having carefully considered the facts and circumstances of the present case, this court is of the considered opinion that no legal or fundamental right of the petitioner has been violated and the contention of the petitioner that it has been discriminated against by the respondent-Board is not sustainable. It is clear that the refusal of permission to the petitioner to open an aided school is due to the fact that it did not fulfil the requirements of financial viability, facilities and infrastructure required for the same.

11.For the above reasons, the writ petition is dismissed as being devoid of any merit. However, it is open to the petitioner-Trust to apply for fresh permission to open an aided girls' school to the respondents. If such an application is made, it shall be processed by the respondents in accordance

with the prevalent Rules and policy in this regard, without being influenced by the dismissal of this writ petition as above. Rule is discharged. There is no order as to costs.

(Smt. Abhilasha Kumari, J.)

(sunil)